

MEMORANDUM OF UNDERSTANDING

AMONG

THE MINISTER OF DEFENSE

OF THE FRENCH REPUBLIC,

THE FEDERAL MINISTRY OF DEFENSE

OF THE FEDERAL REPUBLIC OF GERMANY,

THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM

OF GREAT BRITAIN AND NORTHERN IRELAND

and

THE DEPARTMENT OF DEFENSE

OF THE UNITED STATES OF AMERICA

for

FUTURE AIR CAPABILITIES PROJECTS

(SHORT TITLE: FAC MOU)

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TABLE OF CONTENTS

	INTRODUCTION	4
SECTION I	DEFINITIONS AND ABBREVIATIONS	5
SECTION II	OBJECTIVE	9
SECTION III	SCOPE OF WORK	10
SECTION IV	MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)	10
SECTION V	FINANCIAL PROVISIONS	13
SECTION VI	CONTRACTING PROVISIONS	14
SECTION VII	WORK SHARING	16
SECTION VIII	PROJECT EQUIPMENT	16
SECTION IX	DISCLOSURE AND USE OF PROJECT INFORMATION..	18
SECTION X	CONTROLLED UNCLASSIFIED INFORMATION	22
SECTION XI	VISITS TO ESTABLISHMENTS	23
SECTION XII	SECURITY	23
SECTION XIII	THIRD PARTY SALES AND TRANSFERS	26
SECTION XIV	LIABILITY AND CLAIMS	28
SECTION XV	PARTICIPATION OF ADDITIONAL PARTICIPANTS	29
SECTION XVI	CUSTOMS DUTIES, TAXES AND SIMILAR CHARGES ...	29
SECTION XVII	PROJECT PERSONNEL	30
SECTION XVIII	SETTLEMENT OF DISPUTES	35
SECTION XIX	GENERAL PROVISIONS	35

SECTION XX	AMENDMENT, TERMINATION, WITHDRAWAL, ENTRY INTO EFFECT AND DURATION	36
ANNEX A	PROJECT ARRANGEMENT FORMAT.....	A-1
ANNEX B	CERTIFICATION OF CONDITIONS AND RESPONSIBILITIES FOR FUTURE AIR CAPABILITIES (FAC) PROJECT PERSONNEL	B-1

INTRODUCTION

The Minister of Defense of the French Republic,

the Federal Ministry of Defense of the Federal Republic of Germany,

the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, and

the Department of Defense of the United States of America, hereinafter referred to as the "Participants":

- Having a common interest in defense;
- Recognizing the benefits to be obtained from rationalization, standardization and interoperability of military equipment; and
- Seeking to make the best use of their respective research and development capacities, eliminate unnecessary duplication of work and obtain the most efficient and cost-effective results through cooperation in Future Air Capabilities (FAC), within the Air Senior National Representative (ASNR) forum and the International Cooperative Opportunities Group (ICOG) initiative of the Four Power (France, Germany, United Kingdom and United States) National Armament Directors (NADs).

Have reached the following understandings:

SECTION I

DEFINITIONS AND ABBREVIATIONS

1.1 The Participants have approved the following definitions for terms used in this Memorandum of Understanding (MOU):

Advanced Concept Technology Demonstration (ACTD)		Process to permit the early and affordable evaluation of mature technologies. The evaluation is done to determine military utility before a commitment is made to proceed into a formal acquisition. A successful ACTD may provide a residual operational capability. The residual capability can be replicated, if only a limited number of assets are required, or the demonstrated capability can be transferred into the appropriate phase of a formal acquisition program.
Classified Information		Information that requires protection in the interests of national security and is so designated by the application of a security classification marking.
Concept Exploration (CE)		The first acquisition phase, which typically consists of competitive, parallel short-term concept definition studies. The focus of these efforts is to define and evaluate the feasibility of alternative concepts and to provide a basis for assessing the relative merits (i.e. advantages and disadvantages, degree of risk, etc.) of these concepts at the next milestone decision point. Analysis of alternatives will be used as appropriate to facilitate comparisons of alternative concepts. The most promising system concepts will be defined in terms of initial, broad objectives for cost, schedule, performance, software requirements, opportunities for tradeoffs, overall acquisition strategy, and test and evaluation strategy.
Contract		Any mutually binding legal relationship which obligates a Contractor to furnish supplies or services, and obligates one or more of the

		Participants to pay for them.
Contracting		The obtaining of supplies or services by Contract from sources outside the government organizations of the Participants. Contracting includes description (but not technical selection) of supplies and services required, invitation to bid and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
Contracting Agency		The entity which has authority to enter into, administer, or terminate Contracts.
Contracting Officer	✓	A person representing a Contracting Agency.
Contractor		Any entity awarded a Contract under a Project by a Contracting Agency.
Contributing Participants		Those Participants who are signatories to a particular PA to this MOU.
Controlled Unclassified Information		Unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. Whether the information is provided or generated under this MOU, the information will be marked to identify its "in confidence" nature. It could include information which has been declassified, but remains controlled.
Defense Purposes		Manufacture or other use in any part of the world by or for the armed forces of any Participant.
Designated Security Authority (DSA)		The security office approved by national authorities to be responsible for the security aspects of this MOU.
Engineering and Manufacturing Development (EMD)		The acquisition phase after PDRR which takes mature technologies and translates them into system specific designs and hardware developments. EMD develops interoperable, producible, supportable, and cost effective system designs; validates the manufacturing process;

		and demonstrates system capabilities by test and evaluation.
Future Air Capabilities (FAC)		The ASNR initiative to implement collaboratively developed ACTDs, CE studies and PDRR efforts.
Host Organization		The establishment of the Host Participant to which Project Personnel are assigned for duty pursuant to this MOU.
Host Participant		The Participant to which the Host Organization belongs.
Parent Organization		The establishment of the Parent Participant to which the Project Personnel belong.
Parent Participant		The Participant to which the Parent Organization belongs.
Production		Producing a system/subsystem in manufacturing quantities that provides a full operational capability.
Program Definition and Risk Reduction (PDRR)		The acquisition phase after CE, wherein the program will become defined as one or more concepts, design approaches, and/or parallel technologies and is pursued as warranted. Assessments of the advantages and disadvantages of alternative concepts will be refined. Prototyping, demonstrations, and early operational assessments will be considered and included as necessary to reduce risk so that technology, manufacturing, and support risks are well in hand before the next decision point. Cost drivers, life-cycle cost estimates, cost-performance trades, interoperability, and acquisition strategy alternatives will be considered to include evolutionary and incremental software development.
Project		Specific collaborative activity to conduct ACTDs, CE studies and PDRR programs that are described in a PA to this MOU.

Project Arrangement (PA)		An implementing arrangement under this MOU which specifically details the collaboration on a specific Project.
Project Background Information		Information not generated in the performance of a Project.
Project Equipment		Any material, equipment, end item, subsystem, component, special tooling or test equipment jointly acquired or provided for use in a Project.
Project Foreground Information		Project Information generated in the performance of a Project.
Project Information		Any information provided to, generated in, or used in a PA, regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to copyright, patent, or other legal protection.
Project Personnel		Military or civilian employees of the Parent Organization of one Participant assigned to the Host Organization of another Participant in furtherance of a Project.
Third Party		A government other than the government of a Participant and any person or other entity whose government is not the government of a Participant.

1.2 The following abbreviations are used in this MOU:

ACTD	Advanced Concept Technology Demonstration
ASNR	Air Senior National Representative
CE	Concept Exploration
DSA	Designated Security Authority
EG	Exploratory Group
EMD	Engineering and Manufacturing Development
FAC	Future Air Capabilities
PA	Project Arrangement
PDRR	Program Definition and Risk Reduction
SC	Steering Committee
SG	Systems Group
WG	Working Group

SECTION II

OBJECTIVE

2.1 The objective of this MOU is to engage the Participants at the earliest acquisition stages in collaborative activities. The goal is to identify common mission needs and harmonize operational requirements which could lead to collaborative developments improving national and coalition warfighting capabilities. This MOU defines and establishes the general principles which will apply to the initiation, conduct, and management of Projects established by separate PAs entered into by two or more Participants.

2.2 The FAC Projects encompass joint collaboration on Advanced Concept Technology Demonstrations (ACTDs), Concept Exploration (CE) and Program Definition and Risk Reduction (PDRR) research and development efforts.

2.3 The provisions of this MOU are incorporated by reference in each PA. Detailed provisions of each PA will be consistent with this MOU, will identify the Contributing Participants and will include, as a minimum, provisions concerning the objectives, scope of work, sharing of tasks, management, financial arrangements, security classification, and other special provisions such as audit and Contracting provisions as required, in accordance with the format attached as Annex A of this MOU.

SECTION III

SCOPE OF WORK

3.1 The scope of work of this MOU is to conduct cooperative activities to identify common mission needs, harmonize operational requirements and conduct collaborative developmental activities leading to superior air capabilities. This will encompass conducting ACTDs, and collaboration on CE and PDRR efforts. These collaborations are intended to lead to the development of technologically superior and interoperable conventional weapon systems. PAs may range from ACTDs to conceptual studies and prototype demonstrations consistent with the definitions of ACTDs, CE and PDRR in Section I of this MOU. PAs may provide for the assignment of personnel from one Contributing Participant to facilities of another Contributing Participant to assist in a Project.

3.2 Information exchange for the purposes of harmonizing the Participants' respective FAC requirements and for formulating, developing and negotiating PAs is permitted under this MOU in accordance with paragraph 9.1.1 hereunder. However, the intent of this MOU is to achieve more than information exchange.

3.3 No information relating to EMD or Production may be transferred under this MOU or its PAs. EMD or Production programs which may evolve from collaboration under one or more PAs to this MOU are outside the scope of this MOU and require conclusion of separate arrangements.

SECTION IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1 The Participants' Air Senior National Representatives (ASNRs) form the Steering Committee (SC) which will be responsible for the implementation and executive-level oversight of this MOU. Subordinate to the SC will be a Working Group (WG) which will review international cooperative opportunities which could be the basis for Projects, review status of existing Projects, and make regular reports to the SC. For each Project, there will be a Systems Group (SG) made up of national representatives from each Contributing Participant to conduct Project specific activity. An SG actually forms upon establishment of a PA. Prior to formation of an SG, preliminary work on a candidate FAC topic will be carried out by an Exploratory Group (EG) made up of requirements, acquisition and technical experts from each interested Participant. Individual EGs will become an SG upon establishment of a PA. EGs will disband upon an SC decision to abandon a candidate topic.

4.2 In particular, the SC will:

4.2.1 Monitor international cooperative opportunities for analysis as candidate FAC Projects.

4.2.2 Oversee the development, negotiation and conclusion of PAs.

4.2.3 Oversee the implementation of PAs.

4.2.4 Periodically assess the cooperation conducted under this MOU, and propose revisions as appropriate.

4.2.5 Appoint appropriate national representatives to the WG.

4.3 The WG will, in particular: ✓

4.3.1 Evaluate international cooperative opportunities in conjunction with national operational needs and requirements to develop candidate Projects, and recommend appropriate candidate topics to the SC for decision to proceed.

4.3.2 Assist in developing, negotiating and concluding PAs.

4.3.3 Conduct periodic reviews of the progress of existing Projects.

4.3.4 Appoint the Participants' representatives to the EGs and SGs and designate one of these representatives as the main representative for each EG and SG.

4.3.5 Provide oversight and monitor progress of EGs and SGs toward Project objectives.

4.3.6 Resolve issues brought forward by the EGs and SGs.

4.3.7 Regularly report EG/SG progress to the SC.

4.3.8 Approve plans for disposal of jointly acquired Project Equipment in accordance with Section VIII (Project Equipment) of this MOU.

4.3.9 Approve the assignment of Project Personnel to facilities of the other Contributing Participant(s) to work on a PA in accordance with paragraph 4.7 and Annex B of this MOU.

4.3.10 Monitor Third Party Sales and Transfers in accordance with Section XIII (Third Party Sales and Transfers) of this MOU.

4.3.11 Maintain oversight of the security aspects of the PAs, including reviewing and obtaining approval from the Designated Security Authorities (DSAs) of the Project Security Instruction and the Classification Guide, prior to the transfer of Classified Information or Controlled Unclassified Information.

4.4 The EGs will, in particular:

4.4.1 Analyze candidate FAC topics for their potential as Projects.

4.4.2 Make recommendations to the WG on their conclusions.

4.4.3 Upon SC approval, develop a work plan to include, at a minimum, Project objective, technical scope, work share, Project schedule and resources.

4.4.4 Draft PAs in accordance with the format at Annex A of this MOU and present them to the WG.

4.4.5 Refer issues that cannot be resolved within the EG to the WG.

4.5 The SGs will, in particular:

4.5.1 Execute Projects as specified in signed PAs.

4.5.2 Report Project status to the WG periodically.

4.5.3 Ensure that recommendations regarding possible follow-on work are clearly listed in the final report for the Project.

4.5.4 Refer issues that cannot be resolved within the SG to the WG.

4.6 The SC, WG, EGs and SGs will meet on a regular basis, rotating meetings among the Participants. The Chairman for each SC and WG meeting will be the senior official of the Participant hosting the meeting. EGs and SGs will decide on a chairman to coordinate activity regardless of meeting site unless a different chairmanship approach is approved by the WG. During SC, WG, EG and SG meetings, all decisions require unanimity, each Participant having one vote.

4.7 Assignment of Project Personnel

4.7.1 Any Contributing Participant may assign personnel to the other Contributing Participants' facilities to assist in a Project as determined in a PA.

4.7.2 Section XVII (Project Personnel) of this MOU applies to any assignment.

SECTION V

FINANCIAL PROVISIONS

5.1 This MOU creates no financial or non-financial commitments regarding individual PAs. Detailed descriptions of the financial arrangements for a specific Project, including, at least, the maximum total cost of the Project and each Contributing Participant's maximum contribution, will be contained in the PA.

5.2 Each Participant will contribute its equitable share of the full financial costs and non-financial costs incurred in performing, managing, and administering its responsibilities under this MOU and each PA, including overhead costs, administrative costs, and costs of claims, and, in return, each Contributing Participant will receive an equitable share of the results, as defined in the relevant PA. The assignment of tasks will represent an equitable sharing of the costs of work to be performed under each PA. The sharing of costs, tasks and results between Contributing Participants in a Project will be detailed in the relevant PA.

5.3 The responsibilities of the Participants will be subject to the availability of funds for such purposes. Each Participant will promptly notify the other Participants if available funds are not adequate to fulfill its responsibilities under this MOU or its PAs, and will immediately consult on the course of action to be taken with a view toward continuation on a changed or reduced basis.

5.4 Each Contributing Participant will use its best efforts to perform, or have performed, work specified in each PA within the costs specified in the PA.

5.5 Each Participant will bear the full costs it incurs for performing, managing, and administering its activities under this MOU and participation in a PA, including its share of any Contracts under the provisions of paragraph 5.7 below.

5.6 The following costs will be borne entirely by the Participant incurring the costs:

5.6.1 Costs associated with any unique national requirements identified by a Participant.

5.6.2 Any costs outside the scope of this MOU or its PAs.

5.6.3 The Host Participant will provide, at its own cost, the necessary office space and administrative support for Project Personnel. The Parent Participant(s) will bear those costs described in paragraph 17.3 of this MOU.

5.7 Under a PA, the Contributing Participants may decide that it is necessary for one Contributing Participant to incur contractual or other obligations for the benefit of all Contributing Participants prior to the receipt of all Contributing

Participants' funds. In the event one Contributing Participant incurs such obligations, the Contributing Participants will pay their equitable share of such obligations, will make funds available in such amounts and at such times as may be required by the obligations, and will pay any damages and costs that may accrue from the performance of or cancellation of the obligation in advance of the time such payments, damages, or costs are due.

5.8 If under a PA, all the Contributing Participants decide to use an international organization to contract for the Contributing Participants, the financial provisions and procedures will be determined with the international organization and will be reflected in the PA signed among all the Contributing Participants.

5.9 Where, under a PA, it is necessary to transfer funds between the Contributing Participants, the SG will be responsible for the financial management of the Project. Where necessary, these financial management procedures, which must be in accordance with the national accounting and audit requirements of the Contributing Participants, will be defined in a financial management procedures document proposed by the SG and subject to the approval of the WG. Each Contributing Participant will fund a Project in accordance with the estimated schedule of financial contributions contained in the financial management procedures document.

5.10 Each Contributing Participant to a PA will be responsible for internal audit of procurement activity carried out by it, in accordance with its own national practices. Any audit reports will be made available to the other Contributing Participant(s).

SECTION VI

CONTRACTING PROVISIONS

6.1 When one Contributing Participant contracts solely on its own behalf to perform its own tasks under a PA, it will be solely responsible for its own Contracting, and the other Contributing Participant(s) will not be subject to any liability arising from such Contracts.

6.2 If the Contributing Participants determine that it is necessary under a PA that one Contributing Participant contracts on behalf of other Contributing Participant(s) for tasks under the PA, that Contributing Participant will contract in accordance with its respective national laws, regulations and procedures. Such contractual arrangements will be detailed in the particular PA. Sources from all Contributing Participants to a PA will be allowed to compete on an equal basis for such Contracts. The Contracting Officer will be the exclusive source for providing contractual direction and instructions to Contractors. The SG will be responsible

for the coordination of contracting activities relating to the appropriate PA and will cooperate with the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers and Contract award. Prior to Contract award, the SG will ensure approval of the Contract by the Contributing Participants. The Contracting Officer will also keep the SG advised of all financial arrangements with Contractors.

6.3 If under a PA, all the Contributing Participants decide to use an international organization to contract for the Contributing Participants, the contracting provisions and procedures will be determined with the international organization and will be reflected in the PA signed among all the Contributing Participants.

6.4 For all contracting activities performed by the Contributing Participants, the SG will, upon request, provide a copy of all statements of work for information prior to the issuance of invitations to bid.

6.5 Contributing Participants' Contracting Agencies will negotiate to obtain the rights to use and disclose Project Information required by Section IX (Disclosure and Use of Project Information) of this MOU. Each Contributing Participant's Contracting Agency will insert into its Contracts, and require its Contractors to insert in subcontracts, suitable provisions to satisfy the requirements of this MOU, including Section VIII (Project Equipment), Section IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information), Section XII (Security) and Section XIII (Third Party Sales and Transfers) of this MOU. During the Contracting process, each Contributing Participant's Contracting Officer will advise prospective Contractors of their obligation to notify the Contracting Agency immediately if they are subject to any license or arrangement that will restrict that Contributing Participant's freedom to disclose information or permit its use. The Contracting Officer will also advise prospective Contractors to employ their best efforts not to enter into any new arrangement that will result in restrictions.

6.6 In the event a Contributing Participant's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Section IX (Disclosure and Use of Project Information) of this MOU, or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, the Contracting Officer will notify his SG representative. That Contributing Participant's SG representative will notify the other Contributing Participants' SG representatives of the restriction(s). The Contributing Participants' SG representatives will consult among themselves on an appropriate course of action.

6.7 Each Contributing Participant will promptly advise the other Contributing Participant(s) of any cost growth, schedule delay or other performance problems of any of its Contractors.